

CCRB INVESTIGATIVE RECOMMENDATION

| | | | | | |
|---|---|---------------------------|---|---|--|
| Investigator: Christopher Mills | Team: Team # 3 | CCRB Case #: 201400604 | <input checked="" type="checkbox"/> Force | <input checked="" type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input checked="" type="checkbox"/> Injury |
| Incident Date(s) Wednesday, 01/15/2014 3:50 PM | Location of Incident: intersection of 71st Avenue and 80th Street; 104 Precinct stationhouse | Precinct: 104 | 18 Mo. SOL 7/15/2015 | EO SOL 7/15/2015 | |
| Date/Time CV Reported Wed, 01/15/2014 5:41 PM | CV Reported At: IAB | How CV Reported: Phone | Date/Time Received at CCRB Tue, 01/21/2014 3:13 PM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
| | | |

| Witness(es) | Home Address |
|-------------|--------------|
| | |
| | |

| Subject Officer(s) | Shield | TaxID | Command |
|------------------------|--------|--------|---------|
| 1. DTS Anthony Wright | 4255 | 935991 | 104 PCT |
| 2. POM Louis Marinacci | 22579 | 941229 | 104 PCT |
| 3. An officer | | | 104 PCT |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|-------------------------|-----------|--------|----------|
| 1. POM William Martinez | 09341 | 950836 | 104 PCT |
| 2. POM Jemmyl Alvarez | 00076 | 941342 | 104 PCT |
| 3. POM Philippe Dupont | 28532 | 934803 | 104 PCT |
| 4. SGT Cory Weiner | 4924 | 947600 | 104 PCT |
| 5. SGT Francis Bryant | 00370 | 927980 | 104 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|-----------------------|---|-----------------------------|
| A.DTS Anthony Wright | Force: Near the intersection of 71st Avenue and 80th Street in Queens, Det. Anthony Wright pointed his gun at § 87(2)(b) [REDACTED] | |
| B.POM Louis Marinacci | Force: Near the intersection of 71st Avenue and 80th Street in Queens, PO Louis Marinacci pointed his gun at § 87(2)(b) [REDACTED] | |
| C.POM Louis Marinacci | Abuse: Near the intersection of 71st Avenue and 80th Street in Queens, PO Louis Marinacci threatened § 87(2)(b) [REDACTED] with the use of force. | |
| D.POM Louis Marinacci | Discourtesy: Near the intersection of 71st Avenue and 80th Street in Queens, and at the 104th Precinct stationhouse, PO Louis Marinacci spoke rudely to § 87(2)(b) [REDACTED] | |
| E.POM Louis Marinacci | Force: Near the intersection of 71st Avenue and 80th Street in Queens, PO Louis Marinacci used physical force against § 87(2)(b) [REDACTED] | |
| F.POM Louis Marinacci | Force: Near the intersection of 71st Avenue and 80th Street in Queens, PO Louis Marinacci struck § 87(2)(b) [REDACTED] with a gun. | |

| Officer(s) | Allegation | Investigator Recommendation |
|-----------------------|--|-----------------------------|
| G. An officer | Force: Near the intersection of 71st Avenue and 80th Street in Queens, an officer used physical force against § 87(2)(b) | |
| H.POM Louis Marinacci | Abuse: At the 104th Precinct stationhouse, PO Louis Marinacci refused to provide his shield number to § 87(2)(b) | |

Case Summary

On January 15, 2014, Sgt. Cory Weiner of the 104th Precinct called IAB to report that § 87(2)(b) had been injured during the course of his arrest, generating IAB log number 2014-2037.

On January 15, 2014, at approximately 3:50 p.m., § 87(2)(b) and his friend § 87(2)(b) were arrested at the rear of Atlas Mall near the intersection of 71st Avenue and 80th Street in Queens, and near the intersection of 84th Street and Cooper Avenue in Queens, respectively, for § 87(2)(b). The following allegations resulted from this incident:

Allegation A – Force: Near the intersection of 71st Avenue and 80th Street in Queens, Det. Anthony Wright pointed a gun at § 87(2)(b)

Allegation B – Force: Near the intersection of 71st Avenue and 80th Street in Queens, PO Louis Marinacci pointed his gun at § 87(2)(b)

§ 87(2)(g)

Allegation C – Abuse of Authority: Near the intersection of 71st Avenue and 80th Street in Queens, PO Louis Marinacci threatened § 87(2)(b) with the use of force

Allegation D – Discourtesy: Near the intersection of 71st Avenue and 80th Street in Queens, and at the 104th Precinct stationhouse, PO Louis Marinacci spoke rudely to § 87(2)(b)

§ 87(2)(g)

Allegation E – Force: Near the intersection of 71st Avenue and 80th Street in Queens, PO Louis Marinacci used physical force against § 87(2)(b)

Allegation F – Force: Near the intersection of 71st Avenue and 80th Street in Queens, PO Louis Marinacci struck § 87(2)(b) with a gun

§ 87(2)(g)

Allegation G – Force: Near the intersection of 71st Avenue and 80th Street in Queens, an officer used physical force against § 87(2)(b)

§ 87(2)(g)

Allegation H – Abuse of Authority: At the 104th Precinct stationhouse, PO Louis Marinacci refused to provide his shield number to § 87(2)(b)

§ 87(2)(g)

Mediation was not offered to § 87(2)(b) as an alternative to resolve his complaint since he alleged that he had been injured and due to his arrest related to this incident.

Results of Investigation

Civilian Statement

Complainant/Victim: § 87(2)(b)

- § 87(2)(b) is a 5'11" tall, 150 pound, black man with black hair and brown eyes. He was § 87(2)(b) years old at the time of the incident.

Statements to Medical Personnel

At § 87(2)(b), § 87(2)(b) told § 87(2)(b), a supervising physician at § 87(2)(b), that he had been assaulted by a police officer that evening. § 87(2)(b) said he was thrown to the floor and hit multiple times in the head and face, causing pain to his head, his face, and his left shoulder. He denied having abdominal pain. (Encl. Medical Records)

Arrest Photograph

§ 87(2)(b)'s arrest photograph shows a swollen, red abrasion on his left cheek, extending from near the top of his left ear toward the left corner of his mouth. (Encl. 8)

CCRB Statement

On February 10, 2014, § 87(2)(b) provided a sworn statement to the CCRB at the § 87(2)(b) on Rikers Island. (Encl. 7a-7c) The following is a summary of his statement.

At approximately 4:17 p.m. on January 15, 2014, § 87(2)(b) and his friend § 87(2)(b) attempted to rob an individual, identified via investigation as § 87(2)(b) by approaching him and telling him to give them his phone. Neither § 87(2)(b) nor § 87(2)(b) was armed or gave any indication that they were. § 87(2)(b)'s hands were in his pockets, but § 87(2)(b)'s hands were not. An unidentified man chased them away.

§ 87(2)(b) and § 87(2)(b) ran in different directions, and § 87(2)(b) ran to a location identified via investigation as the back of the Atlas Mall near the intersection of 71st Avenue and 80th Street in Queens, and hid, by standing in a corner with his hands at his sides. § 87(2)(b) was hiding in that position for ten minutes, and could hear officers searching the area. According to § 87(2)(b) the civilian who had initially chased him away approached him. The investigation determined that two officers, PO Louis Marinacci and Det. Anthony Wright of the 104th Precinct, approached § 87(2)(b) simultaneously. § 87(2)(b) described one of them as a light skinned black man, and one of them as a § 87(2)(b) man. The officers' pedigrees were otherwise similar, but the investigation determined that the officer § 87(2)(b) claimed to be the civilian was PO Marinacci of the 104th Precinct, based on the officers' statements.

PO Marinacci said "freeze," or "put your hands up," then, "if you move, I'm putting two in your head." He was pointing his gun at § 87(2)(b)'s chest. § 87(2)(b) put his hands up immediately, saying, "Please don't shoot."

PO Marinacci responded, "Shut the fuck up." § 87(2)(b) was standing behind a low fence and he stepped over it with his hands in the air. After he had stepped over, PO Marinacci struck him in the left cheek with the bottom of the handle of his gun, which was in his right hand. This caused an approximately seven inch abrasion from his left ear to the left side of his mouth. PO Marinacci then grabbed § 87(2)(b)'s shoulders with both hands and threw him to the ground, with a sideways motion, so that § 87(2)(b) landed face downwards. His chin struck the ground first, but he did not sustain any injuries to his chin.

§ 87(2)(b)'s hands were underneath him, and he felt dizzy, as though he was almost unconscious. He was shaking. PO Marinacci put his left boot on top of his head, and he heard two successive clicks from PO Marinacci's gun.

PO Marinacci asked § 87(2)(b) if he “wanted to fucking rob people” and was “going to fucking run” with his boot still on top of § 87(2)(b)’s head. He then punched § 87(2)(b) in the ribs approximately four or five times as he spoke, so that § 87(2)(b) was struck in the ribs with the front end of the barrel of the gun. § 87(2)(b) said he had not done anything wrong and was scared, and PO Marinacci told him to shut up, then grabbed § 87(2)(b)’s cell phone and threw it on the ground. § 87(2)(b) did not complain of any damage to the phone and did not seem upset about the phone.

§ 87(2)(b) was crying, and his face and nose were bleeding. He again asked PO Marinacci not to shoot him. PO Marinacci told him to “shut up,” and hit him once again with the handle of the gun, which was still in his right hand. The gun hit the right side of § 87(2)(b)’s chin, though § 87(2)(b) did not sustain injuries to his chin. PO Marinacci then began to handcuff him. Someone, § 87(2)(b) did not know who, kicked § 87(2)(b) four times in the stomach, while one hand was still under his body and the other was out to the side. He felt an unidentified individual restraining his feet. It took PO Marinacci approximately 50 seconds to a minute to handcuff him, during which time, § 87(2)(b) was unable to move. PO Marinacci’s boot was on top of § 87(2)(b)’s head for approximately three minutes.

After § 87(2)(b) was handcuffed, PO Marinacci stood him up and slapped him in the right side of the face. At that point, he noticed that there were approximately twenty-four officers watching the interaction. All of the officers were male, and there were both uniform and plainclothes officers there, including three officers wearing white uniforms.

After PO Marinacci slapped him, the other officers clapped and congratulated him. There were two police vans and several unmarked vehicles. § 87(2)(b) was transported to the stationhouse by four, unidentified, plainclothes officers.

At the stationhouse, § 87(2)(b) saw PO Marinacci again, and requested PO Marinacci’s shield number. PO Marinacci told him to “shut the fuck up.” § 87(2)(b) never obtained PO Marinacci’s shield number. § 87(2)(b) requested medical attention from several unidentified officers, and was taken to § 87(2)(b). Following the incident, § 87(2)(b) urinated blood. His right shoulder was swollen, his right cheek was swollen, there was a seven inch abrasion to his left cheek, his eye was swollen, he had no feeling in his left arm, and he was experiencing rib and abdominal pain.

Witness: § 87(2)(b)

On November 5, 2014, § 87(2)(b) provided a brief phone statement, which is summarized below. (Encl. 9) However, he refused to schedule a sworn statement during that call, and could not be reached again.

§ 87(2)(b) had attempted to steal his phone, and officers responded to the location. He was placed in the back of Det. Wright’s and PO Marinacci’s vehicle and was there when § 87(2)(b) was arrested at the back of the Atlas Mall.

One of the officers who was with § 87(2)(b) whom § 87(2)(b) described as being slightly heavyset but whom § 87(2)(b) did not otherwise recall, told § 87(2)(b) to keep his head down. Two officers, identified via investigation as Det. Wright and PO Marinacci, approached § 87(2)(b). One of the officers was holding a “stick” but not a gun. The officers took § 87(2)(b) to the ground and handcuffed him. § 87(2)(b) did not see the officers use any other physical force and never saw an officer strike § 87(2)(b) with a gun.

However, since he had been told to keep his head down, and since he did not want § 87(2)(b) to see him, § 87(2)(b) kept his head down after § 87(2)(b) was handcuffed, and he did not see § 87(2)(b) again. § 87(2)(b) recalled hearing an officer tell § 87(2)(b) that § 87(2)(b) was lucky that the other officers had shown up, otherwise, the officer would have beaten § 87(2)(b) up.

When § 87(2)(b) put his head back up, he did not see § 87(2)(b) but the officers were celebrating. Officers may have used profanity when speaking to each other, but § 87(2)(b) did not recall what they said and did not recall profanity being used towards § 87(2)(b). § 87(2)(b) did not know if § 87(2)(b) was injured.

Attempts to Contact Witnesses

The incident occurred in a secluded area which was inaccessible to the public and did not appear, from a GoogleMaps search (Encl. 4a-4c), to have nearby security cameras, so no other civilians witnessed the incident, no fieldwork was conducted at the location, and no video footage could be obtained. The investigation contacted the Atlas Mall and spoke with the head of security there, § 87(2)(b), who stated that there are no cameras at the back of the mall where the incident occurred

NYPD Statements:

Subject Officer: DET. ANTHONY WRIGHT

- *Det. Wright is a 5'8" tall, 190 pound, black man with brown hair and brown eyes. He was § 87(2)(b) old at the time of the incident.*
- *On January 15, 2014, Det. Wright worked from 7:05 a.m. to 7:40 p.m., with overtime from 3:40 p.m. to 7:40 p.m., with his partner, PO Marinacci. They were assigned to the 104th Precinct's SNEU team, and were in uniform. They were driving an unmarked, blue Ford Crown Victoria.*

Memo Book

At 3:50 p.m., he responded to an armed robbery in progress at 80th Street and Cooper Avenue. They arrived at 3:52 p.m. and began to canvass the area. At 4:15 p.m., a man wearing a blue jacket was hiding in the rear of the Atlas Mall near 71st Avenue and 80th Street. He resisted and a struggle ensued. Multiple officers attempted to handcuff him. PO Alvarez cuffed him and secured him at the scene. At 4:28 p.m., PO Dupont arrested him. At 4:40 p.m., the arrest was processed at the 104th Precinct stationhouse. (Encl. 16a-16c)

CCRB Statement

On April 24, 2014, Det. Wright was interviewed at the CCRB. (Encl. 17a-17b) The following is a summary of his statement.

Det. Wright and PO Marinacci were in the vicinity of 80th Street and Cooper Avenue when they heard a call over the radio regarding an armed robbery by a black man wearing a blue jacket. They arrived in approximately two minutes and canvassed the area, and PO Marinacci suggested driving behind the Atlas Mall. They did so, and saw a black man in a blue jacket, who was later identified as § 87(2)(b). § 87(2)(b) was hiding in a corner, with his hands in his pockets. Since § 87(2)(b) was hiding and matched the description the suspect they were searching for, Det. Wright believed him to be the armed robber. Both officers exited their vehicle and told § 87(2)(b) to show his hands.

§ 87(2)(b) did not respond, and kept his hands in his pockets. Det. Wright pointed his gun at § 87(2)(b) and repeated "hands" multiple times, but § 87(2)(b) did not remove his hands from his pockets or say anything. Det. Wright did not know whether PO Marinacci also removed his gun. PO Marinacci then grabbed § 87(2)(b)'s arms and attempted to pull his arms behind his back to handcuff him. Det. Wright re-holstered his firearm and also grabbed § 87(2)(b)'s arms. They took § 87(2)(b) to the ground, so that his knees hit the ground first and he fell forward onto his stomach, with his hands underneath his body. § 87(2)(b)'s face did not strike the ground. Det. Wright did not recall how § 87(2)(b) was brought to the ground, and did not recall whether either officer fell with him.

Approximately seven or eight officers, including Sgt. Francis Bryant, PO Jemmyl Alvarez, and possibly (Det. Wright was not certain) Lt. Fung Chen of the 104th Precinct responded to the scene. Det. Wright could not recall anyone else who was there. Det. Wright repeatedly told § 87(2)(b) to give him his hands, and tried to grab his arms. At least two officers, including PO Alvarez, assisted in restraining § 87(2)(b) but Det. Wright did not know exactly which officers, or how many, assisted. He did not know whether Sgt. Bryant had any physical interaction with § 87(2)(b) but was certain that Lt. Chen did not.

PO Alvarez was able to handcuff § 87(2)(b) and he was placed in an RMP and taken to the stationhouse. § 87(2)(b) never made any statements to Det. Wright, and Det. Wright was not aware of any injuries.

Det. Wright was shown § 87(2)(b)'s arrest photo, but he did not recognize § 87(2)(b) and did not know how § 87(2)(b) had sustained the injury to his cheek that is visible in the picture. He did not believe § 87(2)(b) had had the injury when he was arrested, and was certain that the injury was not caused by any of his or PO Marinacci's actions.

Subject Officer: PO LOUIS MARINACCI

- *PO Marinacci is a 5'7" tall, 180 pound, white man with black hair and brown eyes. He was § 87(2)(b) old at the time of the incident.*
- *On January 15, 2014, PO Marinacci worked from 9:30 a.m. to 6:05 p.m., assigned to the 104th Precinct's SNEU team with Det. Wright. He was in uniform and driving an unmarked, blue Crown Victoria.*

Memo Book

PO Marinacci's memo book entries were consistent with his CCRB statement. (Encl. 13a-13b)

CCRB Statement

On April 22, 2014, PO Marinacci was interviewed at the CCRB. (Encl. 14a-14b)

PO Marinacci § 87(2)(g) added that it took approximately fifteen seconds to take § 87(2)(b) to the ground because he was resisting and flailing his arms. PO Marinacci confirmed that he also pointed his gun at § 87(2)(b) though he re-holstered it before attempting to restrain § 87(2)(b)

Witness Officer: PO JEMMYL ALVAREZ

- *PO Alvarez is a 6 foot tall, 200 pound, black man with black hair and brown eyes. He was § 87(2)(b) old at the time of the incident.*
- *PO Alvarez worked from 7:05 a.m. to 3:30 p.m. on January 15, 2014. At the time of the incident, he was assigned to Patrol with his partner, PO William Martinez, in marked van 8598.*

Memo book

PO Alvarez's memo book entries were consistent with his CCRB statement. (Encl. 22a-22d)

CCRB Statement

PO Alvarez was interviewed at the CCRB on May 19, 2014. (Encl. 23a-23c) The following is a summary of his statement.

PO Alvarez and PO Martinez, were driving back to the 104th Precinct stationhouse from traffic court, when they received a radio run regarding a robbery in progress. They drove to the location and when they arrived, they picked up the victim of the robbery at the corner of 84th Street and Cooper Avenue. This individual was identified via investigation as § 87(2)(b). They then canvassed the area for the robbery suspects, § 87(2)(b) in their vehicle. When they picked § 87(2)(b) up, there were no other officers with him. However, there was a man who appeared to be helping § 87(2)(b) and may have made the 911 call. PO Alvarez did not know whether that man was an officer and did not identify that man.

After approximately twenty minutes of canvassing the area, they received a radio call from their precinct's SNEU team. The SNEU team said they had one of the suspects. PO Alvarez thought they sounded as though they needed help, though he could not recall why. The officers then drove to the SNEU team's location with § 87(2)(b). When they arrived, they asked § 87(2)(b) if the man there was the perpetrator, and § 87(2)(b) said that he was. The officers then both got out of their van. Det. Wright and

PO Marinacci were struggling with the man, whom he identified as § 87(2)(b). PO Alvarez and PO Martinez helped to handcuff § 87(2)(b). When PO Alvarez first arrived, no other officers were present.

PO Alvarez could not recall whether § 87(2)(b) was ever on the ground and could not recall where § 87(2)(b) was when he was handcuffed. § 87(2)(b) was flailing his arms and yelling. PO Alvarez could not recall what § 87(2)(b) was yelling, but thought that he was complaining. PO Alvarez grabbed for § 87(2)(b)'s arms, but did not use any other force against him. PO Martinez helped to handcuff § 87(2)(b) as well, but PO Alvarez could not recall what PO Martinez did. PO Alvarez did not recall seeing any injuries on § 87(2)(b) though he had a vague recollection that there was something on § 87(2)(b)'s chin. He could not remember what it was or where or how § 87(2)(b) obtained whatever injury was on his chin. It took less than a minute to handcuff § 87(2)(b). After § 87(2)(b) was handcuffed, no other force was used. PO Alvarez did not recall an officer slapping § 87(2)(b).

During his CCRB interview, PO Alvarez was shown § 87(2)(b)'s arrest photo, but PO Alvarez did not know how § 87(2)(b) sustained the injury to his cheek. PO Alvarez did not know whether Det. Wright or PO Marinacci ever removed their firearms during the incident. He was not aware of § 87(2)(b) ever being struck with a gun. He did not see an officer ever step on § 87(2)(b)'s head. He was not aware of any injuries to § 87(2)(b)'s shoulder.

During the struggle to handcuff § 87(2)(b) PO Alvarez heard the word “fuck” used multiple times. He did not know the context in which “fuck” was used. PO Alvarez did not curse, and he did not know who was cursing. He thought § 87(2)(b) might have cursed because he seemed upset, but he did not see who cursed because he was not focused on who was cursing and who was not cursing. PO Alvarez did not know what the officers responded to § 87(2)(b)'s statements.

Additional officers arrived at the location, and PO Alvarez and PO Martinez went back their vehicle, because PO Alvarez did not want to leave § 87(2)(b) alone. PO Alvarez could not recall who else arrived at the location. PO Dupont was not present for § 87(2)(b)'s arrest. Lt. Chen arrived at the location after § 87(2)(b) was already handcuffed. Sgt. Weiner was not present at the location because he was with the officers who arrested § 87(2)(b). The uniformed officers at the scene were assigned to his command. An unidentified, plainclothes officer from an outside command was also present.

After getting back in their van, PO Alvarez, PO Martinez, and § 87(2)(b) drove to the location of a second suspect, § 87(2)(b) at 77th Road. § 87(2)(b) identified § 87(2)(b) as the other perpetrator. When they arrived back at the stationhouse, PO Alvarez took § 87(2)(b) to the juvenile room and never saw § 87(2)(b) again.

Witness Officer: PO WILLIAM MARTINEZ

- *PO Martinez is a 5'9" tall, 145 pound, Hispanic man with brown hair and brown eyes. He was § 87(2)(b) years old at the time of the incident.*
- *PO Martinez worked from 7:05 a.m. to 3:40 p.m. on January 15, 2014. At the time of the incident his partner was PO Alvarez. They were in uniform and assigned to Patrol Sectors C, K, and M, in marked van number 8590.*

Memo Book

PO Martinez' memo book entries were consistent with his CCRB statement. (Encl. 20a-20e)

CCRB Statement

PO Martinez was interviewed on April 25, 2014. (Encl. 21a-21b) § 87(2)(g) he added that there was a handcuff on one of § 87(2)(b)'s wrists when he arrived, and he had to use his own handcuffs in addition, since § 87(2)(b) was resisting.

Witness Officer: PO PHILIPPE DUPONT

- *PO Dupont is a 5'7" tall, 165 pound, black man with brown hair and brown eyes. He was § 87(2)(b) old at the time of the incident.*

- On January 15, 2014, PO Dupont worked from 3 p.m. to 11:35 p.m. He was in uniform and assigned to Patrol Sector A with his partner, PO Asar Sanad, in RMP number 5310.

§ 87(2)(b)

Arrest Reports

Memo Book

CCRB Statement

On January 15, 2014, at 3:50 p.m. PO Dupont responded to a robbery in progress, saw § 87(2)(b) and apprehended him. PO Dupont did not participate in or witness § 87(2)(b)'s arrest.

Det. Wright and PO Marinacci spoke with PO Dupont after the arrest. They both told PO Dupont that they engaged in a brief foot pursuit and that § 87(2)(b) resisted arrest by fighting, flailing his arms, and actively trying to escape. PO Dupont did not recall them saying anything else. PO Dupont did not have any knowledge of, or hear § 87(2)(b) or any officer mention: any profanity used during the incident, any officer removing a firearm, or any officer threatening to shoot § 87(2)(b) any officer striking or punching § 87(2)(b) with a gun, any officer kicking § 87(2)(b) in the stomach, slapping him in the face, or stepping on his head.

Witness Officer: SGT. CORY WEINER

- *On January 15, 2014, Sgt. Weiner worked from 2:50 p.m. to 11:47 p.m. He was the 104th Precinct's patrol supervisor, in uniform, and assigned to marked RMP number 3151 with, PO Stephen Schneidawin as his operator.*

Memo Book

At 4 p.m., there was a radio run for a gun point robbery at 84th Street and Cooper Avenue. At 4:45 p.m., PO Dupont arrested two people in regards to positive show ups at two locations. (Encl. 18a-18c)

CCRB Statement

Sgt. Weiner was interviewed at the CCRB on April 23, 2014. (Encl. 19a-19b) The following is a summary of his statement.

At 4 p.m. on January 15, 2014, Sgt. Weiner responded to the intersection of 77th Road and 80th Street, where PO Dupont had chased a man, identified via investigation as § 87(2)(b) into a yard. The area was approximately ten to fifteen blocks from where § 87(2)(b) was arrested. Sgt. Weiner set up a perimeter to arrest § 87(2)(b) who was hiding in a shed. Officers were able to pull him from the shed without any physical altercation or incident. Sgt. Weiner then waited for § 87(2)(b) to come and identify § 87(2)(b). After he did so, § 87(2)(b) was transported to the stationhouse.

At the stationhouse, Sgt. Weiner was told that another individual, identified as § 87(2)(b) had been arrested in connection with the same incident. § 87(2)(b) complained that his shoulder was hurting and that officers broke his arm and scraped his face as they were arresting him. Sgt. Weiner immediately called an ambulance and § 87(2)(b) was taken to the hospital. Sgt. Weiner spoke with Det. Wright and PO Marinacci, who stated that § 87(2)(b) had resisted arrest, but they did mention using any weapons or how § 87(2)(b) had sustained his injuries. Sgt. Weiner was not aware whether § 87(2)(b) was struck with a gun or whether either officer drew his firearm.

Sgt. Weiner was shown the arrest photo of § 87(2)(b). He did not recognize the photo, but stated that the injury in § 87(2)(b)'s cheek was the injury § 87(2)(b) had mentioned. Sgt. Wiener was not aware of any profanity being used during the incident or of any threat to shoot § 87(2)(b). He did not know how many officers were involved or present for § 87(2)(b)'s arrest, other than Det. Wright, PO Marinacci, PO Alvarez, and PO Martinez.

Witness Officer: SGT. FRANCIS BRYANT

- *Sgt. Bryant is a 6'3" tall, 220 pound, bald, black man with black eyes. He was § 87(2)(b) old at the time of the incident.*
- *Sgt. Bryant worked from 9:30 a.m. to 6:27 p.m. on January 15, 2014 as the SNEU sergeant in uniform and assigned to a marked vehicle. He stated that he was working with PO Scott Miller, but did not have his memo book with him, and PO Miller does not appear on the roll call.*

Memo Book

Sgt. Bryant did not have his memo book and did not know if it contained any entries related to this incident at the time of his interview. He faxed it to the undersigned investigator. Though the fax is partially illegible, it indicates that at 3:50 p.m. he responded to a robbery in progress at 80th Street and canvassed the area. At 4:14 p.m. he arrived at 71st Avenue and 80th Street where officers from the 104th Precinct had arrested an individual. (Encl. 24a-24b)

CCRB Statement

Sgt. Bryant was interviewed at the CCRB on July 3, 2014. (Encl. 25a-25b) The following is a summary of his statement.

Sgt. Bryant and PO Miller responded to a radio call regarding a robbery in progress. A description was provided of two men who had committed an armed robbery and then fled the scene.

Multiple units assigned to the 104th Precinct responded to the radio run. The officers who apprehended § 87(2)(b) called for additional units at their location, and Sgt. Bryant and PO Miller responded.

Upon their arrival, § 87(2)(b) was standing and in handcuffs. There were approximately eight officers present, including PO Martinez, PO Wright, and PO Marinacci. Lt. Chen arrived at approximately the same time that Sgt. Bryant arrived. The rest were patrol officers whom Sgt. Bryant did not know. Sgt. Bryant did not recall any officers from any other commands, or any plainclothes officers, being present at that time. § 87(2)(b) was brought to the scene and positively identified § 87(2)(b) as the perpetrator.

Sgt. Bryant did not recall anything notable about § 87(2)(b)'s demeanor. He did not recall seeing any injuries on § 87(2)(b) or being told that § 87(2)(b) was injured. He did not know whether § 87(2)(b) had received medical attention. He did not recall § 87(2)(b) complaining about any injuries. He did not recall discussing the incident with any officers or being told about any difficulty apprehending or handcuffing § 87(2)(b). PO Dupont was the arresting officer, but Sgt. Bryant thought he only responded to the location of the other robber, § 87(2)(b), s, arrest.

Sgt. Bryant did not recall any officers cursing at § 87(2)(b). He did not recall any officer slapping § 87(2)(b). He did not recall § 87(2)(b) ever requesting his or any officers' names or shield numbers, though he had his shield visible.

Medical Records

§ 87(2)(b)'s medical records indicate that at § 87(2)(b), he received medical treatment at § 87(2)(b). He was diagnosed with swelling to his right cheek bone, shoulder strain, and a six centimeter superficial abrasion to his left cheek. He was prescribed Bacitracin ointment and four-hundred milligrams of Ibuprofen before being released back to police custody. The records do not indicate any abdominal injuries. (Encl. Medical Records)

NYPD Documents

Arrest Reports

§ 87(2)(b)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Event Information and Event Chronology for Event # § 87(2)(b)

The Event Information for this incident indicates that an attempted robbery was reported by a male caller at 3:51 p.m. The perpetrators were identified as two black men, possibly armed with guns. A correction at 3:53 p.m. indicated that one of the perpetrators was wearing a blue jacket and green pants and was the one with the gun, and that the perpetrators were possibly in Atlas Park. Officers from the 104th Precinct, including a school sergeant, officers from sectors A and C, and SNEU officers responded.

At 3:57 p.m., one of the perpetrators ran up Cooper Avenue into 80th Street in Atlas Park. At 3:58 p.m., the complainant/victim (identified via investigation as § 87(2)(b)) stated that he had not seen a gun. At 4 p.m., one of the perpetrators was last seen heading towards the back yard of 79-66 78th Avenue. A 104th Precinct sergeant placed a request for aviation.

At 4:12 p.m., SNEU officers stopped one perpetrator at Atlas Mall. At 4:15 p.m., other officers had the second perpetrator stopped at the rear of 79-66 77th Road and a sergeant was responding. At 4:16 p.m., one of the perpetrators was arrested by a 104th Precinct solo car at the rear of 79-66 77th Road, and at 4:17 p.m. the other perpetrator was arrested by SNEU officers at 71st Avenue and 80th Street, and a SNEU sergeant was on the scene. A 104th Precinct lieutenant also responded to the location following the incident. (Encl. 31a-31h)

Command Log

The Command Log entry lists § 87(2)(b) s physical condition as abrasion to his face. (Encl. 33)

Arrest for Incident and Disposition

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Status of Civil Proceedings

- As of October 7, 2014, § 87(2)(b) has not filed a notice of claim with the City of New York regarding this incident. A follow-up request was sent on November 12, 2014, and the response will be added to the case file when it is received at the CCRB. (Encl. 37)

Civilian's Criminal History

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian's CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) (Encl. 4a)

Subject Officer's CCRB History

- PO Marinacci has been a member of the service for eight years and there are five substantiated allegations against him:

Two allegations of abuse of authority resulting from CCRB case number 201104530 were substantiated by the Board, which recommended command disciplines for both allegations. The NYPD imposed a penalty of instructions for one of the allegations.

Three allegations of abuse of authority resulting from CCRB Case number 201311116 were substantiated by the Board, which recommended charges for each of them. The NYPD has not yet reached a disposition. (Encl. 3a)

- Det. Wright has been a member of the service for ten years and there are three substantiated allegations against him:

Two allegations of abuse of authority resulting from CCRB case number 201305640 were substantiated the Board, which recommended command disciplines for both allegations. The NYPD has not yet reached a disposition.

One allegation of abuse of authority resulting from CCRB case number 201311116 was substantiated by the Board, which recommended charges. The NYPD has not yet reached a disposition. (Encl. 3b-3c)

Conclusion

Identification of Subject Officers

Det. Wright, PO Alvarez, and PO Marinacci confirmed their involvement in the incident, though § 87(2)(b) alleged that only one officer initially approached and used force against him. The investigation determined that this officer was PO Marinacci, because § 87(2)(b) described that officer as being light skinned, and PO Marinacci is a white man, while the other officer who approached § 87(2)(b) is a light skinned black man. In addition, both officers stated that PO Marinacci was the first to physically engage § 87(2)(b)

In addition to the allegations he made against specific officers, § 87(2)(b) stated that he felt an unidentified officer, whom he did not see, kick him in the stomach, § 87(2)(g)

§ 87(2)(g)

Investigative Findings and Recommendations

Allegation A – Force: Near the intersection of 71st Avenue and 80th Street in Queens, Det. Anthony Wright pointed a gun at § 87(2)(b)

Allegation B – Force: Near the intersection of 71st Avenue and 80th Street in Queens, PO Louis Marinacci pointed his gun at § 87(2)(b)

Det. Wright and PO Marinacci did not dispute that they pointed their guns at § 87(2)(b) while he was hiding after attempting to commit a robbery and fleeing the location. § 87(2)(g)

§ 87(2)(b) stated that he was unarmed; § 87(2)(g)

the officers had received a report of an armed robbery § 87(2)(b), § 87(2)(g)

An officer can draw his firearm and point it at another person so long as he has a reasonable fear for his own or another's personal safety. PD v. Gliner OATH Index No. 955/00 (2000) (Encl. 1a-1t)

§ 87(2)(g)

Allegation C – Abuse of Authority: Near the intersection of 71st Avenue and 80th Street in Queens, PO Louis Marinacci threatened § 87(2)(b) with the use of force

Allegation D – Discourtesy: Near the intersection of 71st Avenue and 80th Street in Queens, and at the 104th Precinct stationhouse, PO Louis Marinacci spoke rudely to § 87(2)(b)

§ 87(2)(g)

§ 87(2)(b) alleged that, while pointing his gun, PO Marinacci told him, “If you move, I’m putting two in your head.” § 87(2)(b) also alleged that later, PO Marinacci put his gun against § 87(2)(b)’s head and cocked it, while asking if § 87(2)(b) wanted “to fucking rob people.” PO Marinacci allegedly used profanity again at the stationhouse, telling § 87(2)(b) to “shut the fuck up.” § 87(2)(b) also stated that PO Marinacci was the only officer present at that point. PO Marinacci and Det. Wright contended that they did not make that statement and instead both told § 87(2)(b) to put his hands up. § 87(2)(b) contended that while he did not hear officers threaten to shoot § 87(2)(b) he heard an officer tell § 87(2)(b) that he was lucky other officers had shown up, or the officer would have beaten him up.

§ 87(2)(g)

Allegation E – Force: Near the intersection of 71st Avenue and 80th Street in Queens, PO Louis Marinacci used physical force against § 87(2)(b)

Allegation F – Force: Near the intersection of 71st Avenue and 80th Street in Queens, PO Louis Marinacci struck § 87(2)(b) with a gun

§ 87(2)(b) alleged that an officer, identified via investigation as PO Marinacci, used physical force against him and struck him and punched him in the face and stomach with a gun. § 87(2)(g)

§ 87(2)(b)’s medical records and arrest photo indicate that he sustained bruising and an abrasion to his cheeks, though they do not indicate that he sustained any injuries to his abdomen. The

officers were unable to explain the injury to § 87(2)(b)'s cheek, and did not recall him having that injury at the time of his arrest. § 87(2)(b) did not see the alleged force and did not know whether § 87(2)(b) was injured.

§ 87(2)(g)

Allegation G – Force: Near the intersection of 71st Avenue and 80th Street in Queens, an officer used physical force against § 87(2)(b)

§ 87(2)(g) § 87(2)(b) stated that an officer kicked him in the stomach during the course of his arrest, but stated that he did not see who did so. Det. Wright, PO Marinacci, and Det. Alvarez denied kicking him. § 87(2)(b) did not see the alleged force. § 87(2)(b)'s medical records do not indicate that he had injuries to his stomach, and indicate that he denied abdominal pain.

§ 87(2)(g)

Allegation H – Abuse of Authority: At the 104th Precinct stationhouse, PO Louis Marinacci refused to provide his shield number to § 87(2)(b)

§ 87(2)(g) § 87(2)(b) § 87(2)(b) alleged that he requested PO Marinacci's shield, but as addressed in allegation D, PO Marinacci told him to "shut the fuck up." PO Marinacci stated that after § 87(2)(b) was placed in a vehicle for transportation to the stationhouse, he never interacted with § 87(2)(b) again. PO Marinacci's memo book indicates that he arrived at the stationhouse at 4:45 p.m.

§ 87(2)(g)

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

